

HR Weekly Podcast
August 13, 2008

Today is August 13, 2008, and welcome to the HR Weekly Podcast from the State Office of Human Resources. This week's topic is an update on military leave and the possible implications returning military personnel will have on state government agencies.

Recently, the South Carolina General Assembly updated South Carolina's state law concerning military leave and deployment. In the Proviso Codification Act of 2008, the state legislature codified the proviso that allows a state employee in an FTE position who serves on active duty in a combat zone and who has exhausted all available leave for military purposes to receive up to thirty additional days of military leave in any one year. With this military leave option becoming permanent law and more employees being called to active duty, state agencies will have an increasing need to understand deployment and reemployment rights for military personnel.

Since the events of 9/11/2001 and the subsequent deployment of personnel, many state agencies are beginning to see increasing numbers of military personnel returning to state government workplaces. At this year's HR Spring Forum, a presentation was given on the benefits and protections offered to military personnel through the Uniformed Services Employment and Reemployment Rights Act, or USERRA. Enacted in 1994, the law applies to virtually all United States employers, regardless of size.

Under USERRA, agencies are required promptly to reemploy military personnel and not to discriminate based on the individual's military status. USERRA requires employers to allow up to five years of leave to soldiers who are on military duty, perform that duty satisfactorily, and request their job back within the time limits provided by the statute. This five year limitation is waived, however, when the nation is involved in war. Therefore, if a soldier has been on military duty over five years, state agencies are still required to reemploy the individual because the United States is still involved in the war on terrorism. Furthermore, the soldier must be re-employed without regard to whether the military duty was voluntary or involuntary.

Employees are eligible for reemployment rights under USERRA following military service if they meet certain conditions, or "eligibility criteria." The individual:

- Must hold a civilian job.
- Must have given written or verbal notice to the employer prior to leaving the job for military training or service except when precluded by military necessity.
- Must have not exceeded the five-year cumulative limit on periods of service.
- Must have been released from service under conditions other than dishonorable.
- Must report back to the civilian job in a timely manner or submit a timely application for reemployment.

There are very few instances for which an agency can deny a military employee's return to the workplace. In reemploying military personnel, it is important that agencies receive a copy of the individual's discharge document and review if the discharge was honorable. If the discharge was dishonorable, the individual is not covered under USERRA. Moreover, if the individual was ordered for military service for more than 90 days, then an agency is required to give them a "like" position

upon return. If the individual was only required to serve for less than 90 days, then the "exact" position must be given back to the employee.

With the return of many military personnel over the next few years, it is important for agencies to ensure those employees are treated fairly and acknowledged for their brave service. Many awards are available for employers through various programs such as the Employer Support for the Guard and Reserve. At www.esgr.com agencies can sign a "Statement of Support" expressing their support for military personnel. Also at this site, agencies will find sample military orders, branch service policies, and other helpful military links.

If you have any questions regarding USERRA or other military leave concerns, please contact your HR Consultant at 737-0900.

Thank you.